

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

HARRY SMITH, JR. and ROSLYN	)
WOODARD SMITH, individually and	)
as Administrators of the ESTATE	)
OF HARRY SMITH, III,	)
	)
Plaintiffs,	)
	) Civil Action
v.	) No. 04-1254-GMS
	)
CITY OF WILMINGTON, JOHN	)
CIRITELLA, THOMAS DEMPSEY and	)
MATTHEW KURTEN,	)
	)
Defendants.	)

Deposition of JOHNNY WHITEHEAD taken  
pursuant to notice at the United States District  
Court, District of Delaware, Conference Room 2204, 844  
North King Street, Wilmington, Delaware, beginning at  
8:35 a.m., on Tuesday, June 6, 2006, before Kurt A.  
Fetzer, Registered Diplomate Reporter and Notary Public.

12 JOHNNY WHITEHEAD,  
13 the deponent herein, having first been  
14 duly sworn on oath, was examined and  
15 testified as follows:

16 EXAMINATION

17 BY MS. SULTON:

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13 Q. And other than the training that you have  
14 received for the Wilmington Police Department, have  
15 you received any special training related to law

16 enforcement in any way?

17 A. No.

Page 8

1 Q. At any time did Harry Smith, III try to use a  
2 scalpel against your partner?

3 A. No.

4 Q. At any time did he try to use the scalpel  
5 against you?

6 A. No.

7 Q. Did you perceive a threat of Harry Smith, III  
8 to your partner?

9 A. No.

10 Q. Did you perceive a threat of Harry Smith, III  
11 to you?

12 A. Yes.

13 Q. And why did you perceive a threat to you?

14 A. When we were on Washington Street he was armed  
15 with a scalpel walking towards me ignoring my orders.

16 Q. And what were you saying?

17 A. I was telling him to drop the knife, which at  
18 the time I believed it was a knife, repeatedly and I  
19 was backing up giving him an opportunity to drop the  
20 knife.

21 Q. At any time did you think it was a needle?

22 A. I thought it was a needle initially.

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13 Q. Yes. When you first saw him, how far away was  
14 he?

15 A. Maybe half a block.

16 Q. And what drew your attention to him?

17 A. He was running southbound on the west side of  
18 the street with a gown, what appeared to be a gown, a  
19 hospital gown and a band, a hospital band. And just  
20 prior to that complaint we responded to the park which  
21 is in that area for a tall, black male with a gown who  
22 ran away from the hospital.

23 Q. Okay. And who called you from the hospital?

24 A. Who called me from -- I imagine dispatch. We

Johnny Whitehead 10

1 were dispatched to the park for the runaway patient  
2 and then after we cleared that, I was responding to  
3 the hospital to use the bathroom.

6 Q. Well, no. I'm sorry. The question was poorly  
7 framed. Let me try again.

8 From the time that you received the  
9 initial call from dispatch that a patient had run away

10 from the hospital to the time that you saw Harry

11 Smith, III, how much time passed?

12 A. I would say maybe five to ten minutes.

13 Q. When you heard that a patient had run away from  
14 the hospital, you heard it over your radio?

15 A. We were dispatched over the radio, yes.

16 Q. Would anyone who was working at that time as a  
17 police officer have heard that dispatch over the radio  
18 that they're looking for a patient having run away  
19 from the hospital?

20 A. Yes.

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3 Q. Now, so you hear this call over the radio and  
4 you say you were dispatched. Did they specifically  
5 ask for you and your partner, your car to go and check  
6 it out or was it kind of a general call to everybody  
7 working keep your eye out?

8 A. I don't recall. I believe it may have been,  
9 because that's our district I believe we were

10 dispatched.

19 Q. How was your attention drawn to Harry Smith,  
20 III?

21 A. Well, I was responding to the hospital to go to  
22 the bathroom and, again, I saw him running southbound

23 on the west side of the street with a band and a  
24 hospital gown. And then I thought that, I said man,

Johnny Whitehead 12

1 you know, this must be an epidemic. Clearly he wasn't  
2 the guy we were looking for. His physical stature did  
3 not match the guy we were initially looking for, so...

4 Q. And how did he appear to you when you saw him?

5 A. When I first saw him, he was just running  
6 southbound. So I didn't see his facial expression. I  
7 just know it was a dark-skinned, heavyset, black male  
8 running southbound.

9 Q. And it was your understanding what you were  
10 looking for was a perhaps taller, light-skinned male  
11 but someone who had eloped from the hospital?

12 A. Yes.

Page 15

8 Q. And what did you see him do?

9 A. He began to pull on the door of the  
10 Mercedes-Benz and the operator of that vehicle began  
11 to attempt to hold the door. And the door kind of  
12 opened and shut and he was leaning back this  
13 (demonstrating) way.

14 Q. Now, at the time that you saw Harry Smith

15 pulling on this door, was he pulling on it with two  
16 hands or what do you recall seeing?

17 A. I couldn't tell you if it was two hands or one  
18 hand.

19 Q. When you saw him approach the gray Mercedes,  
20 did you see him with what you thought was a needle in  
21 his hand at that time?

22 A. No, I did not see the needle at that time.

23 Q. What did you think you were seeing when you saw  
24 this man in a hospital gown with a hospital band

Johnny Whitehead 16

1 trying to pull on a Mercedes?

2 A. Well, at that time I thought it was a  
3 carjacking in progress.

19 Q. Okay. But I want to be clear about carjacking.

20 When I think of a carjacking I think of someone  
21 putting a gun or knife to somebody's face and saying  
22 get out of the car or I'm going to kill you.

23 A. Right

24 Q. That's a carjacking. You would agree with me,

Johnny Whitehead 17

1 yes?

2 A. Yes, I would agree.

3 Q. And if you don't have that, what you may be

4 looking at is just auto theft, correct?

5 A. Auto theft. Okay. Yes, I agree.

6 Q. So is it fair to say that what you first saw

7 since you didn't see a weapon was what you thought was

8 an auto theft?

9 A. Yes.

10 Q. And then what did you do?

11 A. I activated my overheads and drove right behind

12 Mr. Smith.

13 Q. So while you're doing all this observation

14 you're physically in your patrol car?

15 A. Yes, ma'am.

Page 17

23 Q. Have you ever operated the vehicle with its

24 windows up, all the windows up?

Johnny Whitehead 18

1 A. Yes.

2 Q. And when you have done that, is it possible for

3 you to hear what is occurring half a block away from

4 you when all of the windows are up?

5 A. With the windows up, unless you have a

6 jackhammer or a loud weapon, there's no way that you

7 can actually hear with all of the windows up from a  
8 block away.

9 Q. Or half a block?

10 A. Again, unless you have a loud weapon. That's  
11 the only way you will be able to hear.

12 Q. So if I'm a half a block -- well, when you  
13 first saw Mr. Smith, he was about half a block from  
14 you, correct?

15 A. Yes.

16 Q. Could you hear, while you were sitting in your  
17 patrol car could you hear anything that he was saying  
18 to the driver of the gray Mercedes?

19 A. No.

Page 19

16 Q. You did not have a shotgun inside the passenger  
17 compartment of that car on September 13, 2003,  
18 correct?

19 A. Yes. That's correct.

20 Q. Where was your shotgun?

21 A. The shotgun was in the trunk of the vehicle.

Page 21

20 Q. And in front of that partition there is behind  
21 your head a shotgun rack, correct?

22 A. Yes.



23 Q. And is that rack locking?

24 A. Yes. It's possible to lock that rack, yes.

Page 22

11 Q. Would I as a person off the street never having

12 driven a patrol car know where the button is on the

13 center console to unlock the shotgun?

14 A. Probably not if you're not used to the police

15 vehicles.

Page 31

12 Q. And what were you taught to do if you walk up

13 on what you believe is a car theft in progress?

14 A. You can arrest the suspect.

15 Q. Have you ever been told you can use deadly

16 force?

17 A. For a car theft?

18 Q. Yes.

19 A. No.

20 Q. In fact, you have been trained that you can't

21 use deadly force for a car theft?

22 A. That is correct.

23 Q. What about car chases, what were you trained to

24 do in car chases?

Johnny Whitehead 32

1 A. Basically, they don't last too long in the  
2 city. We're told to -- they don't condone that. I  
3 mean, usually it will last a couple of blocks, but  
4 usually a supervisor will call it off because the city  
5 is so condensed so they will usually cut them off.

6 Q. And when you say, "cut them off," you mean  
7 that --

8 A. Terminate it.

9 Q. -- they will let the guy who is trying to get  
10 away get away?

11 A. Yes.

12 Q. Because you don't want the citizens getting run  
13 over and that kind of thing, correct?

14 A. Absolutely.

15 Q. Did you get any training on whether or not you  
16 can use your patrol vehicle as a barrier or a block to  
17 block a street to stop a car chase? Did you get any  
18 training in that area?

19 A. Now, see, I know we did, but I don't know if it  
20 was after that incident. The Attorney General's  
21 Office said that you don't put yourself or your  
22 vehicle to form a roadblock to prevent someone from

23 stealing a vehicle.

24 Q. And you don't recall the exact time frame, but

Johnny Whitehead 33

1 is it fair to say that before the shooting incident no

2 one had specifically told you yeah, go ahead and put

3 your patrol car out there as a barrier?

4 A. That's correct. I don't think anyone would

5 condone that.

6 Q. Have you ever heard of that before, somebody

7 using their car as a barrier in the city?

8 A. Well, I'm pretty sure that there are those who

9 have done that, but that is not, that is not proper

10 protocol.

11 Q. And what about securing the shotgun, did you

12 get any training in whether or not it's proper for you

13 just to place your shotgun in the trunk without a

14 holder or anything?

15 A. Yes. We were trained to put it in the locking

16 mechanism that you see here in Exhibit 4.

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18 Q. And then tell me what happened, step by step

19 what happened.

20 A. Sure. He had his back to me when I pulled up.

21 He was right outside of my driver's side window. And

22 he turned to me. He was breathing hard and there was  
23 blood on his shirt.

24 Now I'm thinking that he was a victim of

Johnny Whitehead 35

1 some type of assault-related complaint and he was  
2 seeking help. So I opened my door and I said, "Okay,  
3 sir, just calm down." That's what I said to him. And  
4 then I noticed what I thought was a needle from the  
5 hospital and he was breathing hard and holding the  
6 needle.

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14 Q. So while you're tussling with him and he's  
15 actually in your vehicle before that door closes and  
16 he pulls off, before you fire a shot you're tussling  
17 with him, he doesn't use that scalpel to try to cut  
18 you, does he?

19 A. No.

20 Q. He didn't curse at you, did he?

21 A. No.

22 Q. Did he say anything to you?

23 A. No.

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5 Q. Is it your understanding that if someone steals

6 a police car then the police may use deadly force?

7 A. Not for just stealing a police car, no.  
Page 43

8 Q. So incoming from where?

9 A. Well, my partner called it in before we engaged  
10 and units were already en route and there was another  
11 unit before Mr. Smith took off, there's another unit  
12 right in the block.

13 As a matter of fact, there was -- what's  
14 her name?

15 Q. Donohue?

16 A. Sergeant Donohue, yes.

17 Q. So as you're running those two blocks, are you  
18 seeing other cars come in and begin --

19 A. The only vehicle that I seen, that I saw was  
20 Sergeant Donohue's vehicle.

21 Q. In this two blocks where you were running?

22 A. Chasing, I'm sorry, pursuing our vehicle which  
23 was operated by Mr. Smith.

24 Q. Is it fair to say that within the first block

Johnny Whitehead 44

1 of your foot chase of the vehicle that you were aware  
2 that Sergeant Donohue was now engaged in also pursuing  
3 the vehicle?

4 A. Yes. Yes.

5 Q. Why did you continue to do a foot chase if you  
6 have Sergeant Donohue driving a police vehicle?

7 A. Well, I knew that I struck him and maybe I was  
8 hoping that he would lose consciousness and crash and  
9 that way I can effect an arrest. That's what I was  
10 hoping, but the car just kept going southbound.

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14 Q. What does it mean when a Wilmington police  
15 officer says he has a clear backdrop?

16 A. It means that you can shoot without the bullet  
17 missing its target and hitting someone else, an  
18 innocent bystander.

19 Q. Have you received any training about whether or  
20 not a Wilmington police officer can shoot his gun when  
21 there are citizens on the street?

22 A. From what I understand, it is not recommended  
23 that you shoot your gun at someone when there's a lot  
24 of citizens that could be hit. I choose not to.

Johnny Whitehead 50

1 Q. Were you trained that if there's citizens on  
2 the street and somebody else could get hit so,  
3 therefore, you don't have a clear backdrop that you're

4 not supposed to shoot your gun?

5 A. Yes.

6 Q. What is your definition of excessive use of  
7 force?

8 A. Any force that is unnecessary to effect an  
9 arrest.

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4 Q. So Sergeant Donohue got on the radio and said  
5 what based on your understanding?

6 A. I believe it was shots fired.

7 Q. And how did she know shots were fired?

8 A. She was responding, she was in the block when I  
9 fired my shot.

10 Q. So she saw you shoot Harry?

11 A. I don't know what she saw. I know that she was  
12 in the block. She was close enough to see. Whether  
13 or not she saw it or not, I don't know.

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18 Q. Were you listening to the radio?

19 A. Yes.

20 Q. Okay. And what were you hearing on the radio?

21 A. I was hearing sirens. I was hearing officers

22 speaking in a loud tone and excited tone.

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13 Q. Now, you're not saying that he was armed with a

14 shotgun, are you?

15 A. No.

16 Q. So he wasn't armed with a shotgun?

17 A. No, he was not armed with a shotgun.

18 Q. So as best you know, he was armed with a

19 scalpel?

20 A. A scalpel.

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1 Q. Yes, should you give.

2 A. The only information is what type of weapon, if

3 any, that the suspect or defendant may have that could

4 pose a threat to me or him.

5 Q. Any other information?

6 A. And a description so that he or she will know

7 who I am talking about.

8 Q. Are you trained that it's okay to shoot at a

9 moving vehicle?

10 A. It is not.

11 Q. Say again?

12 A. It is not.



13 Q. It is not okay to shoot at a moving vehicle?

14 A. Yes.

15 Q. That's how you were trained?

16 A. Yes.

17 Q. Is it fair to say, sir, that -- we will be done

18 in just a few minutes here.

19 Is it fair to say, sir, that at no point,

20 and again I'm going to keep you on this date of

21 September 13, 2003, that at no point between the time

22 when you observed what you thought was a car theft in

23 progress of the Mercedes and the point at which you

24 became aware that Harry Smith had been killed, at no

Johnny Whitehead 59

1 time did anybody ask you whether he had a weapon?

2 A. I don't think so. I don't think anyone asked

3 me if he had a weapon.

4 Q. Is it fair to say that from the point at which

5 you first observed him and he was running across the

6 street and then you saw what you thought was this car

7 theft in progress and the point at which you heard

8 that he had been killed, at no point did anybody ask

9 you had he tried to carjack a car?

10 A. I don't think so.

11 Q. Using the same time period, is it fair to say  
12 that nobody asked you whether or not Harry Smith had  
13 threatened you?

14 A. Did someone ask me if he had threatened me? No  
15 one asked me if he had threatened me.

16 Q. Other than that interview that you did with  
17 Sergeant Brown that was videotaped, I think it runs  
18 maybe eight minutes or so, did you do any other  
19 interviews, formal interviews?

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21 Q. Are the police vehicles ever checked by the  
22 shift supervisor before you guys go out after roll  
23 call?

24 A. Seldomly.

Johnny Whitehead 61

1 Q. Are they supposed to check them?

2 A. I believe so, yes.

3 Q. Did anyone check your vehicle on 9-13-03?

4 A. No.

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3 Q. Right. Are there any guidelines within which  
4 an officer must exercise his discretion or is he free  
5 to do whatever he wants to do?

6 A. We have guidelines.

7 Q. And where are those guidelines? Are they  
8 written?

9 A. They're written in the white book.

10 Q. What's the white book?

11 A. The white book is our rules and regulations.

12 Q. And do you carry that in your car?

13 A. No.

14 Q. Too thick?

15 A. Yes.

16 Q. Is it fair to say that you were shooting at  
17 Harry because you were trying to stop him or were you  
18 shooting at him because you were trying to kill him?

19 A. I was trying to stop him.

23 Do you know of any officer ever in your  
24 work with the Wilmington Police Department who has

Johnny Whitehead 63

1 been disciplined for excessive use of force?

2 A. I'm pretty sure that there are officers that  
3 have been disciplined. I do not know of any.

4 Q. You don't know of any?

5 A. No.